

SUGGESTED FORM D-5

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

IN RE

Case No. _____

Debtor

Plaintiff

v.

A.P. No. _____

Defendant

ORDER TO TRANSMIT RECORD IN NON-CORE PROCEEDING TO DISTRICT
COURT, COMBINED WITH FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION REGARDING PLAINTIFF'S REQUEST FOR ENTRY
OF DEFAULT JUDGMENT

The Clerk of Bankruptcy Court is directed to transmit this Adversary Proceeding to the District Court for consideration of the following, pursuant to P.L. 98-353 (The Bankruptcy Amendments and Federal Judgeship Act of 1984).

TO THE DISTRICT COURT:

Having examined the record in this Adversary Proceeding and having found it to be a non-core proceeding, the Bankruptcy Court is without authority to enter a final or dispositive order or judgment. (See, § 157(c), Title 28 United States Code). Plaintiff has requested entry of default judgment.

This Court has determined that:

☐

No hearing was necessary.

☐

A hearing was necessary, which hearing was held on _____
at _____,

on notice to _____

at which hearing there appeared _____

who was heard.

(over)

(2)

FINDINGS

This Court now finds that the Complaint was filed by the Plaintiff on _____; that an affidavit of service was filed attesting to service of the Summons and a copy of the Complaint; that the Defendant failed to plead or otherwise defend within the time prescribed by law and rule; that the Plaintiff has duly and timely requested entry of judgment by default, by application or affidavit filed in this Court on _____; and that the Clerk certified and entered the Fact of Default on _____.

CONCLUSIONS

The Plaintiff is entitled under applicable law to entry of judgment by default.

RECOMMENDATION

Wherefore, it is recommended that the District Court award default judgment to the Plaintiff in the amount of \$_____ (plus the allowed per diem amount which accumulated since the application for default), which amount is fully itemized in the attached Amount Due [suggested form D-6].

Date: _____

U.S.B.J.